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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,959

12/30/2004

Maano Milles

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EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

08/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,959

Applicant(s)

MILLES, MAANO

Examiner

Kristen C. Matter

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-10, 12-14, 16, 17 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 11, 15, 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/28/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-10, 12, 13, 16, 17, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosso (US 5,195,512) in view of Guevrekian (US 5,715,813).

Regarding claims 1, 2, 8, 9, 13, 16, and 17, Rosso discloses an apparatus for scavenging exhaust gas from a patient comprising a continuous tube (24) that can be considered a housing or collar in the sense that the tube is placed about the patient's neck for removing exhaled gas from the mouth and nose area (abstract), said tube comprising at least one vent and an outlet (see Figure 2), said apparatus further including a vacuum source (28) connected to the outlet and in communication with the tube. While Rosso does not expressly disclose the scavenging of anesthesia, resort is had to Guevrekian, which teaches scavenging of anesthesia (column 1, lines 5-17) for the purpose of preventing contaminating the working area. Inasmuch as Rosso discloses the removal of exhaled gases from a patient's mouth and nose area, it would have been obvious to one of ordinary skill in the art to also removed exhaled anesthetic from a patient's mouth and nose area because it would have prevented anesthesia gas from contaminating the working area as taught by Guevrekian.

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Regarding claims 3 and 10, the tube disclosed by Rosso has two closed ends (24a and at the connection to the vacuum source) and the outlet (30) is positioned centrally between the ends (see Figure 2).

Regarding claim 6, although Rosso does not disclose the tube itself being rigid, Rosso discloses the need for rigidity to properly position the tube (column 2, lines 45-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the tube itself rigid to minimize the number of parts needed to position the tube about the patient's neck.

Regarding claim 7, Rosso illustrates the tube (24) as being O-shaped in cross-section (Figure 3).

Regarding claims 12 and 19, Rosso discloses straps (26) for retaining the tube about a patient's neck.

Regarding claim 20, Rosso discloses the apparatus as being draped over a patient's chest and shoulders (column 2, line 57-column 3, line 15).

Claims 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosso and Guevrekian as applied to claims 1, 8, and 16 above, and further in view of Brekke et al. (US 5,151,843). The difference between Rosso as modified by Guevrekian and claims 14 and 21 is a vacuum line also being interconnected with a nasal mask vacuum line. Brekke et al., in an anesthesia scavenging system, teach a vacuum line (57) being interconnected with a nasal mask vacuum line (Figure 8) for the purpose of evacuating exhaled gases from the patient's nose (column 3, lines 39-43). It would have been obvious to one of ordinary skill in the art at the time

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the invention was made to have provided a means for evacuating anesthesia within the gases being exhaled from a patient's nose as taught by Brekke et al.

Allowable Subject Matter

Claims 4, 5, 11, 15, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Blasdel et al., Fischer, Jr., et al., Dicastilho, Corn, Rickerl, Derrick, and Lindkvist are cited to show other similar nasal anesthesia scavenging systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kristen C. Matter
Examiner
Art Unit 3771



JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
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8/20/07